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No. 84-614

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# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1984

SALLY CORD HUMMEL, VALLEY BANK OF NEVADA, HAFTCO,  
PETER RUSSELL KIRK HUMMEL and ERRETT ALLEN HUMMEL,  
*Petitioners,*

vs.

MONT PELERIN CORPORATION, N.V.,  
*Respondent.*

On Petition For Writ of Certiorari  
to the Court of Appeal of the  
State of California, Second  
Appellate District, Division Four

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### BRIEF OF RESPONDENT MONT PELERIN CORPORATION, N.V. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent Mont Pelerin Corporation, N.V. ("Mont Pelerin") hereby submits its Brief in Opposition to the Petition For Writ of Certiorari filed by petitioner Sally Cord Hummel and others on October 17, 1984.<sup>1</sup> This Brief is filed to point out that the questions petitioners would present to this Court are not even raised by the challenged decision of the California Court of Appeal, for reasons noted

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<sup>1</sup>Mont Pelerin has no parent companies, subsidiaries or affiliates.

in the following paragraphs. Moreover, the Petition does not even appear to allege that the challenged decision is in conflict with another decision of a State Court, or with a decision of any Federal Court. The Petition should be denied for that reason as well.

In essence, the first question petitioners would present is whether their federal constitutional rights have been violated by a holding that certain real property in which they have a minority beneficial interest should be partitioned and sold, despite "express terms of the trust" in which their interest is held prohibiting a partition sale. However, that question, offered in the form of two different questions, is not in fact presented by the record. The Court of Appeal found that petitioners were simply misreading the relevant trust documents, and that nothing in those documents prohibits a partition sale of the subject property. (Petition, Appendix C, at C-9 to C-11) The Court of Appeal clearly indicated that it would have ruled in the petitioners' favor, if their reading of the relevant trust documents had been correct. (*Id.*) Accordingly, the first question actually presented for review is whether trust documents were properly construed — a question of contract interpretation of no federal significance whatsoever.<sup>2</sup>

The only other question petitioners would present is whether their constitutional rights have been violated by purported "retroactive" application of 1976 revisions to the California partition statute. However, no such question is presented by the facts of this case, as the result petitioners complain of — sale rather than division of the subject property — would have been the same under pre-1976 or post-

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<sup>2</sup>Indeed, the Court of Appeal also indicated that the party requesting partition and sale of the subject property — Mont Pelerin — is a successor-in-interest to persons who were never parties to the trust documents, and thus is not bound by the terms of those documents in any event. (Petition, Appendix C, at C-9)

1976 California law. The Court of Appeal concluded that the subject property should be partitioned by sale because "the value of each party's interest" in the property "would be substantially diminished by its division" rather than its sale. (Petition, Appendix C, at C-14) Pre-1976 California law likewise provided for partition by sale where the value of property "would be substantially diminished by its division". *Romanchek v. Romanchek*, 248 Cal.App.2d 337, 344, 56 Cal.Rptr. 360, 365 (1965); *Cunningham v. Frymire*, 160 Cal.App.2d 726, 729, 325 P.2d 555, 558 (1958); *Formosa Corp. v. Rogers*, 108 Cal.App.2d 397, 411, 239 P.2d 88, 97 (1951); *Sting v. Beckham*, 94 Cal.App.2d 823, 825, 211 P.2d 586, 587 (1949).

The Petition For Writ of Certiorari should therefore be denied.

Respectfully submitted,

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